

111TH CONGRESS
1ST SESSION

S. 891

To require annual disclosure to the Securities and Exchange Commission of activities involving columbite-tantalite, cassiterite, and wolframite from the Democratic Republic of Congo, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 23, 2009

Mr. BROWNBACK (for himself, Mr. DURBIN, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To require annual disclosure to the Securities and Exchange Commission of activities involving columbite-tantalite, cassiterite, and wolframite from the Democratic Republic of Congo, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Congo Conflict Min-
5 erals Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) The Democratic Republic of Congo was dev-
2 astated by a civil war carried out in 1996 and 1997
3 and a war that began in 1998 and ended in 2003,
4 which resulted in widespread human rights violations
5 and the intervention of multiple armed forces or
6 armed non-state actors from other countries in the
7 region.

8 (2) Despite the signing of a peace agreement
9 and subsequent withdrawal of foreign forces in
10 2003, the eastern region of the Democratic Republic
11 of Congo has continued to suffer from high levels of
12 poverty, insecurity, and a culture of impunity, in
13 which illegal armed groups and military forces con-
14 tinue to commit widespread human rights abuses.

15 (3) According to a study by the International
16 Rescue Committee released in January 2008, con-
17 flict and related humanitarian crisis in the Demo-
18 cratic Republic of Congo have resulted in the deaths
19 of an estimated 5,400,000 people since 1998 and
20 continue to cause as many as 45,000 deaths each
21 month.

22 (4) Sexual violence and rape remain pervasive
23 tools of warfare used by all parties in eastern region
24 of the Democratic Republic of Congo to terrorize
25 and humiliate communities, resulting in community

1 break down which causes a decrease in the ability of
2 affected communities to resist control by illegal
3 armed forces and a loss of community access to min-
4 erals. Sexual violence and rape affect hundreds of
5 thousands of women and girls, frequently resulting
6 in traumatic fistula, other severe genital injuries,
7 and long-term psychological trauma.

8 (5) A report released by the Government Ac-
9 countability Office in December 2007 describes how
10 the mismanagement and illicit trade of extractive re-
11 sources from the Democratic Republic of Congo sup-
12 ports conflict between militias and armed domestic
13 factions in neighboring countries.

14 (6) In October 2002, the United Nations Group
15 of Experts on the Democratic Republic of Congo
16 called on member states of the United Nations to
17 adopt measures, consistent with the guidelines estab-
18 lished for multinational enterprises by the Organiza-
19 tion for Economic Co-operation and Development, to
20 ensure that enterprises in their jurisdiction do not
21 abuse principles of conduct that they have adopted
22 as a matter of law.

23 (7) In February 2008, the United Nations
24 Group of Experts on the Democratic Republic of
25 Congo stated, “individuals and entities buying min-

1 eral output from areas of the eastern part of the
2 Democratic Republic of Congo with a strong rebel
3 presence are violating the sanctions regime when
4 they do not exercise due diligence to ensure their
5 mineral purchases do not provide assistance to ille-
6 gal armed groups” and defined due diligence as in-
7 cluding the following:

8 (A) Determining the precise identity of the
9 deposits from which the minerals they intend to
10 purchase have been mined.

11 (B) Establishing whether or not these de-
12 posits are controlled or taxed by illegal armed
13 groups.

14 (C) Refusing to buy minerals known to
15 originate, or suspected to originate, from depos-
16 its controlled or taxed by illegal armed groups.

17 (8) In its final report, released on December
18 12, 2008, the United Nations Group of Experts on
19 the Democratic Republic of the Congo found that of-
20 ficial exports of columbite-tantalite, cassiterite, wolf-
21 ramite, and gold are grossly undervalued and that
22 various illegal armed groups in the eastern region of
23 the Democratic Republic of Congo continue to profit
24 greatly from these natural resources by coercively
25 exercising control over mining sites from where they

1 are extracted and locations along which they are
2 transported for export.

3 (9) United Nations Security Council Resolution
4 1857, unanimously adopted on December 22,
5 2008—

6 (A) broadens existing sanctions relating to
7 the Democratic Republic of Congo to include
8 “individuals or entities supporting the illegal
9 armed groups . . . through illicit trade of nat-
10 ural resources,”; and

11 (B) encourages member countries to en-
12 sure that companies handling minerals from the
13 Democratic Republic of Congo exercise due dili-
14 gence on their suppliers.

15 (10) Continued weak governance in the Demo-
16 cratic Republic of Congo has allowed the illicit trade
17 in the minerals columbite-tantalite, cassiterite, wolf-
18 ramite, and gold to flourish, which empowers illegal
19 armed groups, undermines local development, and
20 results in a loss or misuse of tax revenue for the
21 Government of the Democratic Republic of Congo.
22 The development of stronger governance and eco-
23 nomic institutions that support legitimate cross-bor-
24 der trade in such minerals would—

1 (A) help prevent the exploitation of such
2 minerals by illegal armed groups; and

3 (B) enable the hundreds of thousands of
4 people who depend on such minerals for their
5 livelihoods to benefit from such minerals.

6 (11) Metals derived from columbite-tantalite,
7 cassiterite, wolframite, and gold from the Demo-
8 cratic Republic of Congo are used in diverse techno-
9 logical products sold worldwide, including mobile
10 telephones, laptop computers, and digital video re-
11 corders.

12 (12) In February 2009, the Electronic Industry
13 Citizenship Coalition and the Global e-Sustainability
14 Initiative released a statement asserting that—

15 (A) use by the information communications
16 technology industry of mined commodities that
17 support conflict in such countries as the Demo-
18 cratic Republic of Congo is unacceptable; and

19 (B) electronics companies can and should
20 uphold responsible practices in their operations
21 and work with suppliers to meet social and en-
22 vironmental standards with respect to the raw
23 materials used in the manufacture of their
24 products.

1 (13) Notwithstanding the extensiveness of the
2 supply chains of technological products and the ex-
3 tensiveness of the processing stages for the metals
4 derived from columbite-tantalite, cassiterite, wolff-
5 ramite, and gold used in such products, companies
6 that create and sell products that include such met-
7 als have the ability to influence the situation in the
8 Democratic Republic of Congo by—

9 (A) exercising due diligence in ensuring
10 that their suppliers provide raw materials in a
11 manner that does not—

12 (i) directly finance armed conflict;

13 (ii) result in labor or human rights
14 violations; or

15 (iii) damage the environment;

16 (B) verifying—

17 (i) the country from which the min-
18 erals used to derive such metals originate;

19 (ii) the identity of the exporter of the
20 minerals; and

21 (iii) that all appropriate tax payments
22 are made; and

23 (C) committing to support mineral export-
24 ers from the Democratic Republic of Congo
25 who—

- 1 (i) fully disclose their export pay-
2 ments; and
3 (ii) certify that their minerals do
4 not—
5 (I) directly finance armed con-
6 flict;
7 (II) result in labor or human
8 rights violations; or
9 (III) damage the environment.

10 **SEC. 3. STATEMENT OF POLICY.**

11 It is the policy of the United States, as affirmed by
12 the Democratic Republic of Congo Relief, Security, and
13 Development Promotion Act of 2006 (Public Law 109–
14 456; 22 U.S.C. 2151 note) and consistent with United Na-
15 tions Security Council Resolution 1857 (2008), to promote
16 peace and security in the eastern Democratic Republic of
17 Congo by supporting efforts of the Government of the
18 Democratic Republic of Congo, other governments in the
19 Great Lakes Region of Africa, and the international com-
20 munity—

- 21 (1) to monitor and stop commercial activities
22 involving the natural resources of the Democratic
23 Republic of Congo that contribute to illegal armed
24 groups and human rights violations in the Demo-
25 cratic Republic of Congo; and

1 (2) to develop stronger governance and eco-
 2 nomic institutions that can facilitate and improve
 3 transparency in the cross-border trade involving the
 4 natural resources of the Democratic Republic of
 5 Congo in order to reduce exploitation by illegal
 6 armed groups and promote local and regional devel-
 7 opment.

8 **SEC. 4. INVESTIGATION, REPORTS, AND STRATEGY RE-**
 9 **GARDING COLUMBITE-TANTALITE, CAS-**
 10 **SITERITE, WOLFRAMITE, GOLD, AND HUMAN**
 11 **RIGHTS ABUSES IN THE DEMOCRATIC RE-**
 12 **PUBLIC OF CONGO.**

13 (a) SUPPORT OF MANDATE OF UNITED NATIONS
 14 GROUP OF EXPERTS ON THE DEMOCRATIC REPUBLIC OF
 15 CONGO.—The President, acting through the Secretary of
 16 State, the United States Permanent Representative to the
 17 United Nations, and other appropriate United States Gov-
 18 ernment officials, shall use the voice and vote of the
 19 United States at the United Nations Security Council to
 20 renew the mandate and strengthen the capacity of the
 21 United Nations Group of Experts on the Democratic Re-
 22 public of Congo to investigate links between natural re-
 23 sources and the financing of illegal armed groups, and en-
 24 sure that the Group of Experts' recommendations are
 25 given serious consideration.

1 (b) MAP OF MINERAL-RICH ZONES AND ARMED
2 GROUPS IN DEMOCRATIC REPUBLIC OF CONGO.—

3 (1) IN GENERAL.—Not later than 120 days
4 after the date of the enactment of this Act, the Sec-
5 retary of State shall, consistent with the rec-
6 ommendation from the United Nations Group of Ex-
7 perts on the Democratic Republic of Congo in their
8 December 2008 report, work with other member
9 states of the United Nations and local and inter-
10 national nongovernmental organizations—

11 (A) to produce a map of mineral-rich zones
12 and armed groups in the eastern region of the
13 Democratic Republic of Congo; and

14 (B) to make such map available to the
15 public.

16 (2) UPDATES.—The Secretary of State shall
17 update the map required by paragraph (1) not less
18 frequently than once every 180 days until the Sec-
19 retary of State certifies that no armed party to any
20 ongoing armed conflict in the Democratic Republic
21 of Congo or any other country is involved in the
22 mining, sale, or export of columbite-tantalite, cas-
23 siterite, wolframite, or gold, or the control thereof,
24 or derives benefits from such activities.

1 (c) GUIDANCE FOR COMMERCIAL ENTITIES.—The
2 Secretary of State shall, consistent with the recommenda-
3 tion from the United Nations Group of Experts on the
4 Democratic Republic of Congo in their December 2008 re-
5 port, work with other member states of the United Na-
6 tions and local and international nongovernmental organi-
7 zations to provide guidance to commercial entities seeking
8 to exercise due diligence on their suppliers to ensure that
9 the raw materials used in their products do not—

10 (1) directly finance armed conflict;

11 (2) result in labor or human rights violations;

12 or

13 (3) damage the environment.

14 (d) STRATEGY.—

15 (1) IN GENERAL.—Not later than 180 days
16 after the date of the enactment of this Act, the Sec-
17 retary of State shall, working with the Administrator
18 of the United States Agency for International Devel-
19 opment, submit to the appropriate congressional
20 committees a strategy to address the linkages that
21 exist between human rights abuses, armed groups,
22 and the mining of columbite-tantalite, cassiterite,
23 wolframite, and gold in the Democratic Republic of
24 Congo.

1 (2) CONTENTS.—The strategy required by
2 paragraph (1) shall include the following:

3 (A) A plan to assist the Government of the
4 Democratic Republic of Congo and other gov-
5 ernments in the region in establishing and ef-
6 fectively implementing the necessary frame-
7 works and institutions to formalize and improve
8 transparency in the trade of columbite-tantalite,
9 cassiterite, wolframite, and gold.

10 (B) An outline of assistance currently
11 being provided and an assessment of future as-
12 sistance that could be provided by the Govern-
13 ment of the United States to help the Govern-
14 ment of the Democratic Republic of Congo
15 strengthen the management and export of nat-
16 ural resources in the eastern region of the
17 Democratic Republic of Congo.

18 (C) A description of punitive measures
19 that could be taken against individuals or enti-
20 ties whose commercial activities are supporting
21 illegal armed groups and human rights viola-
22 tions in eastern Democratic Republic of Congo.

23 (e) ANNUAL HUMAN RIGHTS REPORTS.—In pre-
24 paring those portions of the annual Country Reports on
25 Human Rights Practices relating to the Democratic Re-

1 public of Congo or countries that share a border with the
2 Democratic Republic of Congo, the Secretary of State
3 shall ensure that such reports include a description of any
4 instances or patterns of practice that indicate that the ex-
5 traction and cross-border trade in columbite-tantalite, cas-
6 siterite, wolframite, or gold has negatively affected human
7 rights conditions or supported specific human rights viola-
8 tions, sexual or gender-based violence, or labor abuses in
9 the eastern region of the Democratic Republic of Congo,
10 during the period covered by each report.

11 (f) ANNUAL ORGANIZATION FOR ECONOMIC CO-OP-
12 ERATION AND DEVELOPMENT INVESTMENT COMMITTEE
13 REPORT.—In preparing the United States’ annual report
14 to the Organization for Economic Co-operation and Devel-
15 opment Investment Committee, the Secretary of State
16 shall include a description of efforts by the United States
17 to ensure, consistent with the Organization for Economic
18 Co-operation and Development Guidelines for Multi-
19 national Enterprises, that enterprises under United States
20 jurisdiction are exercising due diligence to ensure that
21 their purchases of minerals or metals are not originating
22 from mines and trading routes that are used to finance
23 or benefit illegal armed groups in the Democratic Republic
24 of Congo.

1 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
 2 authorized to be appropriated to the Secretary of State
 3 for fiscal year 2010 such sums as may be necessary for
 4 the Secretary to carry out the provisions of this section.

5 (h) DEFINITIONS.—In this section:

6 (1) APPROPRIATE CONGRESSIONAL COMMIT-
 7 TEES.—The term “appropriate congressional com-
 8 mittees” means—

9 (A) the Committee on Appropriations, the
 10 Committee on Foreign Relations, and the Com-
 11 mittee on Banking, Housing, and Urban Affairs
 12 of the Senate; and

13 (B) the Committee on Appropriations, the
 14 Committee on Foreign Affairs, and the Com-
 15 mittee on Financial Services of the House of
 16 Representatives.

17 (2) HUMAN RIGHTS REPORTS.—The term
 18 “Human Rights Reports” means all reports sub-
 19 mitted by the Secretary of State to Congress under
 20 sections 116 and 502B of the Foreign Assistance
 21 Act of 1961 (22 U.S.C. 2151n and 2304).

1 **SEC. 5. DISCLOSURE TO SECURITIES AND EXCHANGE COM-**
 2 **MISSION OF ACTIVITIES RELATING TO CO-**
 3 **LUMBITE-TANTALITE, CASSITERITE, AND**
 4 **WOLFRAMITE INDUSTRIES.**

5 Section 13 of the Securities Exchange Act of 1934
 6 (15 U.S.C. 78m) is amended by adding at the end the
 7 following new subsection:

8 “(m) DISCLOSURE TO COMMISSION OF ACTIVITIES
 9 RELATING TO COLUMBITE-TANTALITE, CASSITERITE,
 10 AND WOLFRAMITE INDUSTRIES.—

11 “(1) IN GENERAL.—Not later than 180 days
 12 after the date of enactment of this subsection, the
 13 Commission shall promulgate rules requiring any
 14 person described in paragraph (2)—

15 “(A) to disclose annually to the Commis-
 16 sion the country of origin of columbite-tantalite,
 17 cassiterite, or wolframite related to any of the
 18 activities described in paragraph (3); and

19 “(B) if disclosure is required under sub-
 20 paragraph (A) and the country of origin dis-
 21 closed under subparagraph (A) is the Demo-
 22 cratic Republic of Congo or an adjoining coun-
 23 try, to disclose annually to the Commission the
 24 mine of origin of such columbite-tantalite, cas-
 25 siterite, and wolframite.

1 “(2) PERSON DESCRIBED.—A person is de-
2 scribed in this paragraph if the person—

3 “(A) is required to file reports to the Com-
4 mission under subsection (a); and

5 “(B) either—

6 “(i) engages in activities described in
7 paragraph (3); or

8 “(ii) controls a person that engages in
9 activities described in paragraph (3).

10 “(3) ACTIVITIES DESCRIBED.—An activity de-
11 scribed in this paragraph is—

12 “(A) the commercial exploration, extrac-
13 tion, importation, exportation, or sale of colum-
14 bite-tantalite, cassiterite, or wolframite; or

15 “(B) the use of such minerals, derivatives
16 of such minerals, components that include such
17 minerals, or components that include derivatives
18 of such minerals in the manufacture of a prod-
19 uct for sale.

20 “(4) REVISIONS AND WAIVERS.—The Commis-
21 sion may revise or temporarily waive the require-
22 ments described in paragraph (1) if the Commission
23 determines that such revision or waiver is—

24 “(A) necessary for the protection of inves-
25 tors; and

1 “(B) in the public interest.

2 “(5) TERMINATION OF DISCLOSURE REQUIRE-
3 MENTS.—The disclosure requirements of this sub-
4 section shall terminate if the President—

5 “(A) determines that—

6 “(i) no armed party to any ongoing
7 armed conflict in the Democratic Republic
8 of Congo or any other country—

9 “(I) is involved in an activity de-
10 scribed in paragraph (3)(A) with re-
11 spect to columbite-tantalite, cas-
12 siterite, or wolframite; or

13 “(II) derives benefits from such
14 activity; or

15 “(ii) a regional framework has been
16 established and effectively implemented to
17 monitor and regulate the activities de-
18 scribed in paragraph (3)(A) with respect to
19 columbite-tantalite, cassiterite, or wolf-
20 ramite in the Democratic Republic of
21 Congo so that such activities do not fi-
22 nance or benefit illegal armed groups; and

23 “(B) notifies the Commission of the deter-
24 mination under subparagraph (A).

1 “(6) AUTHORIZATION OF APPROPRIATIONS.—

2 There is authorized to be appropriated to the Com-
3 mission for fiscal year 2010 such sums as may be
4 necessary for the Commission to carry out the provi-
5 sions of this subsection.

6 “(7) DEFINITIONS.—In this subsection, the fol-
7 lowing definitions shall apply:

8 “(A) ADJOINING COUNTRY.—The term
9 ‘adjoining country’, with respect to the Demo-
10 cratic Republic of Congo, means a country that
11 shares an internationally recognized border with
12 the Democraetic Republic of Congo.

13 “(B) CONTROL.—The term ‘control’
14 means—

15 “(i) in the case of a corporation, own-
16 ership of at least 50 percent of the voting
17 stock of the corporation; and

18 “(ii) in the case of any other entity,
19 ownership of interests representing at least
20 50 percent of the voting capital of the enti-
21 ty.

22 “(C) FOREIGN PERSON.—The term ‘for-
23 eign person’ means a person—

24 “(i) in the case of an individual, who
25 is an alien as such term is defined in sec-

tion 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)); or

“(ii) in the case of a partnership, corporation, or other entity, that is organized under the laws of a foreign country or that has its principal place of business in a foreign country.

“(D) PERSON.—The term ‘person’ has the meaning given the term in section 3(a) but does not include—

“(i) any foreign nongovernmental organization that—

“(I) has consultative status with the United Nations Economic and Social Council; or

“(II) has been accredited by a department or specialized agency of the United Nations; or

“(ii) a foreign person whose business activities are strictly limited to providing goods and services that are—

“(I) intended to relieve human suffering;

1 “(II) intended to promote wel-
 2 fare, health, religious, or spiritual ac-
 3 tivities;

4 “(III) used for educational or hu-
 5 manitarian purposes;

6 “(IV) used for journalistic activi-
 7 ties; or

8 “(V) used for such other pur-
 9 poses as the Secretary of State may
 10 determine serve the foreign policy in-
 11 terests of the United States.”.

12 **SEC. 6. SENSE OF CONGRESS ON ASSISTANCE FOR AF-**
 13 **FECTED COMMUNITIES AND SUSTAINABLE**
 14 **LIVELIHOODS.**

15 (a) SENSE OF CONGRESS ON ASSISTANCE FOR AF-
 16 FECTED COMMUNITIES.—It is the sense of Congress that
 17 the Administrator of the United States Agency for Inter-
 18 national Development should expand and better coordinate
 19 programs to assist and empower communities in the east-
 20 ern Democratic Republic of Congo whose livelihoods de-
 21 pend on the mineral trade, particularly—

22 (1) communities affected by sexual and gender-
 23 based violence; and

24 (2) individuals displaced by violence.

1 (b) SENSE OF CONGRESS ON FUTURE YEAR FUND-
2 ING.—It is the sense of Congress that the Secretary of
3 State and the Administrator should work with the appro-
4 priate congressional committees to increase assistance in
5 fiscal years beginning after fiscal year 2009 for commu-
6 nities affected by violence in the Democratic Republic of
7 Congo, specifically—

8 (1) to provide medical treatment, psychological
9 support, and rehabilitation assistance for survivors
10 of sexual and gender-based violence;

11 (2) to provide humanitarian relief and basic
12 services to people displaced by violence;

13 (3) to improve living conditions and livelihood
14 prospects for artisanal miners and mine workers;
15 and

16 (4) to alleviate poverty by reconstructing infra-
17 structure and revitalizing agricultural production.

18 (c) SENSE OF CONGRESS ON COORDINATION OF AS-
19 SISTANCE.—It is the sense of Congress that the United
20 States should work with other countries, on a bilateral and
21 multilateral basis—

22 (1) to increase protection and services for com-
23 munities in the eastern Democratic Republic of
24 Congo at risk of human rights violations associated
25 with the mineral trade, particularly women and girls;

1 (2) to strengthen the management and trade of
2 natural resources in the Democratic Republic of
3 Congo; and

4 (3) to improve the conditions and livelihood
5 prospects of artisan miners and mine workers.

6 **SEC. 7. REPORT.**

7 Not later than 2 years after the date of the enact-
8 ment of this Act, the Comptroller General of the United
9 States shall submit to Congress a report that includes the
10 following:

11 (1) An assessment of the effectiveness of the
12 provisions of this Act and section 13(m) of the Secu-
13 rities Exchange Act of 1934 (15 U.S.C. 78m(m)), as
14 added by section 5, in promoting peace and security
15 in accordance with section 3.

16 (2) A description of the problems, if any, en-
17 countered by the President, officials described in
18 section 4(a), the Securities and Exchange Commis-
19 sion, and the Administrator of the United States
20 Agency for International Development in carrying
21 out the provisions of this Act and such section
22 13(m).

23 (3) A description of the adverse impacts of car-
24 rying out the provisions of this Act and such section

1 13(m), if any, on communities in the eastern Demo-
2 cratic Republic of Congo.

3 (4) Recommendations for legislative or regu-
4 latory actions that can be taken—

5 (A) to improve the effectiveness of the pro-
6 visions of this Act and such section 13(m) to
7 promote peace and security in accordance with
8 section 3;

9 (B) to resolve the problems described pur-
10 suant to paragraph (2), if any; and

11 (C) to mitigate the adverse impacts de-
12 scribed pursuant paragraph (3), if any.

○